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*Hon. Sir Wm Young. Chief Justice
of Nova Scotia -*

With Compliments of the Author.

James W. Titman

REPORT OF THE COUNCIL A
339.9
R81

OF THE

Royal Colonial Institute

ON THE

NEWFOUNDLAND FISHERY QUESTION.

NOVEMBER, 1875.

London :

UNWIN BROTHERS, PRINTERS, 109A, CANNON STREET;
AND AT CHILWORTH, SURREY.

1876.

INTRODUCTION.

HIS GRACE THE DUKE OF MANCHESTER, the President of the Royal Colonial Institute, having called the attention of the Council to the subject of the Fisheries of Newfoundland, they appointed a Committee, in the month of March last, for the purpose of collecting information, and drawing up a Report upon this important Imperial question.

Having occupied much time in preliminary researches into the past history of the question, and collected a variety of important documents, bearing upon the subject, the Committee have agreed to the following Report, setting forth all the facts of interest and importance relating to it.

They have to acknowledge the valuable information they received in the course of its preparation from the Hon. F. B. T. Carter, the Premier of Newfoundland, during his recent visit to England, as well as the assistance rendered by the Hon. C. F. Bennett, and Mr. R. J. Pinsent, the late Solicitor-General of Newfoundland.

The Council have accepted the Report of the Committee, and now present it to the Fellows of the Royal Colonial Institute. They cannot doubt that it will be read with the deepest attention, containing, as it does, in their judgment, a complete, succinct, impartial, and exhaustive exposition of the facts of a question of most vital importance to the interests, not only of the inhabitants of Newfoundland, but of the whole British Empire.

From this Report it will be seen—

1. That the French have only been allowed certain rights

of fishing in the waters of Newfoundland concurrently with British subjects, and not to the exclusion of the latter.

2. That the French have only a right to occupy temporarily portions of the shore for fishing and for drying fish, and that they may occupy no more of the shore than is requisite for such purpose, nor for any time beyond the fishing season, the right of occupation ceasing at the end of each season.

3. That the concurrent right of fishing was limited to the sea, at distances from the shore, varying at different periods, for the purpose of taking codfish.

4. That British fishermen are not prohibited from using, nor have the French any exclusive right of using, any engines or machines for taking fish.

5. That the French have no right to take fish of any description in the estuaries or rivers of Newfoundland, whether on the so-called "French Shore" or elsewhere.

6. That no judicatory rights are conferred on the French by the Treaties, and therefore the interference exercised by their cruisers in disputes between subjects of the two nations is unjustifiable.

7. That there is nothing in any of the Treaties to justify the assertion of a right to exclude British subjects from occupying and settling on the land on that part of the coast called the "French Shore," between Cape St. John and Cape Ray. Such a claim, in fact, affects the right of sovereignty in Newfoundland.

FREDERICK YOUNG,

HONORARY SECRETARY.

London, November, 1875.

REPORT

ON THE

NEWFOUNDLAND FISHERY QUESTION.

The Committee appointed by the Council of the Royal Colonial Institute to investigate the French claims respecting the Newfoundland Fisheries have agreed to the following Report.

The claims now put forward by France upon the coast of Newfoundland, and virtually enforced by her squadron there, may be resolved into two classes:

(I.)

A claim to the *exclusive right of fishery* on that part of the coast extending from Cape St. John to Cape Ray, a distance including about *one half* of the entire coast of Newfoundland, to which the Treaty of Paris (1763) only gave her a *concurrent* right.

(II.)

A claim to prevent the British inhabitants of Newfoundland from any occupation of land, situated within such limits, for mining, agricultural, or other purposes; in fact, a claim to virtual territorial sovereignty of the same.

From a strict investigation of the whole question in regard to both these claims it appears—

First,—That the following list embraces the whole of the *Treaties, Declarations, Acts of Parliament, Conventions, and Decrees*, evermade and entered into by Great Britain with France in relation to the Newfoundland fisheries, viz.:—

Treaty of Utrecht ...	...	...	...	11th April, 1713.
Treaty of Paris ...	...	...	...	10th February, 1763.
Treaty of Versailles ...	...	...	...	3rd September, 1783.
British Declaration...	...	...	...	3rd September, 1783.

* Expired with Treaty of 1783, which was annulled by war, 1793.

* The annotations of Treaties, &c., are given as they appear in the collection of Mr. Hertslett, Librarian, Foreign Office.

6 *Report on the Newfoundland Fishery Question.*

Act of Parliament, 28 Geo. III. c. 85	...	...	...	1788.
Expired with Treaty, 1783, which was annulled by war, 1793.				
Treaty of Amiens, Art. 15...	...	...	...	1802.
Merely confirms Treaty of Versailles.				
Definitive Treaty of Peace, Art. 18	...	...	80th May, 1814.	
Confirmed by Art. 11, of the Definitive Treaty of 20th November, 1815.				
Act of Parliament, 5 Geo. IV., c. 51	...	...	...	1824.
Expired 31st December, 1834; see Act 2 & 3 Wm. IV. c. 79.				
Convention ...	...	...	...	4th April, 1857.
Not confirmed by Local Government of Newfoundland.				
Decree (France) ...	...	...	...	4th April, 1857.
Relates to the above Convention.				
Act of Parliament, G.B. 2 & 3 Wm. IV. c. 79	...	...	...	1832.
Expired 31st December, 1834.				

So that in the history of British Imperial legislation in connection with France in reference to the Newfoundland fisheries, there are now only in force—

1. Treaty of Utrecht ... 1713.
2. Treaty of Paris ... 1763.
3. Treaty of Versailles ... 1783.
4. Definitive Treaty of Peace, Art. XIII. ... 1814.

and as all these are very brief we propose to give them in their order.

(1)

TREATY OF UTRECHT.

“Treaty of peace and friendship between Great Britain and France, signed at Utrecht, 11th April, 1713.

Extract (Translation).

“XIII.* The Island called Newfoundland, with the adjacent Islands, shall, from this time forward, belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said Island are in the possession of the French shall be yielded and given up within seven months from the exchange of the ratifications of this Treaty, or sooner if possible, by the most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. *Nor shall the most Christian King, his heirs, and successors, or any of their subjects, at any time hereafter lay*

* Renewed by Art. V. of the Treaty of Paris, 1763.

claim to any right to the said Island and Islands, or to any part of it or them.

"Moreover it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said Island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish and to dry them on land, in that part only and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Bonavista to the Northern point of the said Island, and from thence running down by the western side, reaches as far as the place called Point Riche.* But the Island called Cape Breton, and also all others, both in the mouth of the river St. Lawrence, and in the gulf of the same name, shall hereafter belong of right to the French; and the most Christian king shall have all manner of liberty to fortify any place or places there.

"Done at Utrecht, the 11th April, 1718.

"(Signed)

"JOHN BRISTOL, C.P. (L.S.)

HUXELLES (L.S.)

"STRATFORD (L.S.)

MESNAGER (L.S.)."

(2)

TREATY OF PARIS.

"Definitive Treaty between Great Britain and France (and Spain), signed at Paris, the 10th February, 1763.

Extract (Translation).

"V.† The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII. of the Treaty of Utrecht; which Article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence). And His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the Islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton out of the said Gulf, the subjects of the Most Christian King shall not be permitted to exer-

* These boundaries are altered by the Treaty of 1783.

† Renewed by Art. VI. of the Treaty of Versailles, 1783.

cise the said fishery but at the distance of fifteen leagues from the coasts of the Island of Cape Breton ; and the fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said Gulf, shall remain on the footing of former Treaties.

“ VI. The King of Great Britain cedes the Islands of St. Pierre and Miquelon in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen ; and his said Most Christian Majesty engages not to fortify the said Islands ; to erect no buildings upon them, but merely for the convenience of the fishery ; and to keep upon them a guard of fifty men only for the police.

“ Done at Paris, the 10th February, 1763.

“ (Signed) CHOISEUL, DUC DE PRASLIN (L.S.)
“ BEDFORD, C.P.S. (L.S.) EL. MARQ. DE GRIMALDI (L.S.)”

(8)

TREATY OF VERSAILLES.

“ Definitive Treaty between Great Britain and France. Signed at Versailles, 3rd September, 1788.*

Extract (Translation as laid before Parliament).

“ IV. His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland, and to the adjacent Islands, as the whole were assured to him by the Thirteenth Article of the Treaty of Utrecht ; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right, by the present Treaty, to His Most Christian Majesty.

“ V. His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, on the eastern coast of Newfoundland, in fifty degrees north latitude ; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Raye, situated in forty-seven degrees fifty minutes latitude. *The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.*

* Renewed by Art. XIII. of the Definitive Treaty of Peace, 1814.

"VI. With regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it conformably to the Fifth Article of the Treaty of Paris.

"Done at Versailles, the 3rd of September, 1788.

"(Signed)

"MANCHESTER (L.S.).

GRAVIER DE VERGENNES (L.S.)."

(4)

"Article XIII. of the Definitive Treaty of Peace, 1814.

"Definitive Treaty between Great Britain and France. Signed at Paris, the 30th May, 1814.*

"XIII. The French right of fishing upon the Great Bank of Newfoundland, upon the coasts of the Island of that name, and of the adjacent Islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792."

The Articles of these four Treaties are now the sole basis on which France can found any legal ground to fishery rights on the coast of Newfoundland.

Now, what are those rights, as so curtly and graphically therein set forth?

The Article XIII. of the Definitive Treaty of Peace of 1814 states, that it (the right of fishing upon the coasts of Newfoundland) "shall be replaced upon the footing in which it stood in 1792"—that is, on the footing it derived under the three Treaties of *Utrecht*, *Paris*, and *Versailles*. It can stand upon no other, for no other now exists; and if any others ever have existed, giving any greater extension or privileges, they have expired or been annulled.

Firstly,—The last Treaty of Versailles, prior to 1792, after merely changing the locality of the previous right, states with regard to it: "*The French fishermen shall enjoy the fishery right which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.*" Passing over the Treaty of Paris (1763), which restricts and binds the rights of French fishermen upon the coasts of Newfoundland to a far greater extent than is now sought to be enforced against them, the language of Article XIII. of the Treaty of Utrecht is not only sufficiently plain to show that there never was any intention to give the French the sole and exclusive right of fishing upon any part of the coast, as will appear from the words themselves, viz.: "*It shall be allowed to the subjects of France, to catch fish, and to dry them on land, in that part*

* Confirmed by Art. XI. of the Definitive Treaty of 28th November, 1815.

only, and in no other besides that, of the said Island of Newfoundland, which stretches," &c., but even goes so far as to state as if, from the fear that such a sole and exclusive right might be claimed, "*nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said Island and Islands, or to any part of it for them.*"

Therein an exclusive or sovereign right to any part was distinctly and expressly ignored and forbidden, while granting to the French only a certain limited and permissive right to catch and dry fish.

Secondly,—It appears that custom has never given to the French any sole or exclusive right of fishing upon a certain portion of the coast of Newfoundland. *On the contrary*, in practice the British there have ever exercised *concurrent rights* of fishing with the French.

Persistent in their exertions to obtain concessions from the British Government, the French have construed the desire of England for peace, as giving them a right which we contend has no legal basis. By the bare fact of usurpation they are now claiming, and to a certain extent exercising, a sovereign right over portions of an English Colony which is totally incompatible with the dignity of the British nation.

Among the best works upon that Colony, is a "*History of its Government, &c.*," by John Reeves, Esq., a former Chief Justice of Newfoundland, published in London, 1793; and to show how early after the peace of Utrecht the French commenced their aggressive measures upon the coast, and how steadfastly their unwarrantable claims have been opposed, it is only necessary to refer to Mr. Reeves's book.

In Part II. page 53, Mr Reeves states: "At the peace of Utrecht we were put into possession of Newfoundland in a way we had not enjoyed it before for some years. Placentia, and all the parts occupied by the French, were now ceded to the King of Great Britain, in full sovereignty; *the French retaining nothing more than a license to come and go during the fishing season.*"

Again, page 55: "It had become a doubt whether that part of the Island, lately ceded by the French, was subject to the provisions of Stat. 10 and 11 Will. III." (a Statute passed in the year 1698, intituled, "An Act to encourage the trade to Newfoundland") "the point was brought forward in consequence of the Lieutenant-Governor of the garrison at Placentia, and some of the *French planters* having, on leaving the place, disposed of their plantations for money, and *in this manner attempted to convey a right of property, &c.* This matter was brought before the Board of Trade, and their lordships were of opinion that Stat. 10 and 11 Will. III. extended to the ceded lands, and that all the beaches and plantations there ought to be left to the public use, and be disposed of as directed by that Act;" thus showing how strong

the right was against any exclusive claim, and how clearly the public right to use every portion of the coast of Newfoundland was recognised.

The same author continues, page 59: "The parts that had been surrendered by the French occasioned in various ways great contest and discontent. We have before seen that it was the opinion of the Board that those parts all fell under the regulations of Stat. 10 and 11 Will. III. ; and this was confirmed by the opinion of the law officers." And as further showing that concurrent rights were then exercised by the British with the French, Mr. Reeves (page 92) states it to be a matter of serious complaint on the part of the merchants of Newfoundland (1798) "*that the French parts were not so open for fishing-ships to get room as they should be.*"

The interests of Newfoundland seem to have been sadly neglected by the Imperial Government, whereas, from the importance of its fisheries as a nursery and training-school for British seamen, that Colony has probably contributed more than any other of the same population to the maritime strength and renown of England.

In a debate in the House of Commons, March 25th, 1823, Dr. Lushington said: "There never had been a Colony so neglected as that of Newfoundland:" and in a subsequent debate, April, 1829, on the Newfoundland Fisheries, Mr. Robinson stated: "The truth was that up to the present time the interests of the inhabitants of Newfoundland had given way to the interests of private individuals in this country."

It seems unfair that such a hardy and gallant race should have to struggle not only with the unjust discrimination of bounties paid by the French and other foreign Governments, but also with the keenly felt neglect of the mother country, to whom they naturally turn for protection in those rights which by solemn Treaties she has assured them.

Anspach's "History of Newfoundland," published, London, 1827, contains much valuable information relative to the Island and its Fisheries; but nowhere is the subject of the French concessions treated as the absolute grant of a sole and exclusive right; indeed, had it been so then considered, the inhabitants of Newfoundland would have taken up arms at once to resist the claim; and Mr. Anspach throughout his able history speaks of the fish-trade to Newfoundland being allowed to France "*under restrictions,*" and of the strong feeling against its being so allowed even "*under restrictions.*"

A subsequent history of Newfoundland by the Rev. Charles Pedley, published, London, 1863, deals minutely and conclusively with the French claims to an exclusive right of fishery on any portion of the coast, as unfounded in law and unsanctioned by treaty. The opinions of Mr. Pedley are of great value from his residence in Newfoundland, and his

laborious researches into the Ancient Records of the Colony since 1764, placed at his disposal by Governor Bannerman. On page 48 Mr. Pedley states: "By the Treaty of Utrecht, Great Britain was solemnly confirmed in the exclusive sovereignty of the entire territory; but the French were recognised as having the right of fishing concurrently with the English along certain portions of the shore."

On page 105, speaking of Sir Hugh Palliser, the Governor of Newfoundland in 1764, as sent to devise and carry out the local rules necessary to give effect to the Definitive Treaty of Paris, "by establishing on a practical basis the intercourse between the subjects of two rival nations having a concurrent right of fishing on the same coast," Mr. Pedley states: "The instructions from the Governor were careful to show that within those boundaries the French had no superior rights or privileges over the British fishermen;" and he quotes a portion of such rules issued by Governor Palliser (June 19th, 1764), for the guidance of the commanders of King's ships, Admirals, &c., as follows: "to take the most exact and particular care that the said subjects of France be permitted and allowed in common with the King's subjects, to choose their stations there during the fishery season."

The Act of 28 Geo. III. cap. 35, which expired with the Treaty of 1783, was regarded by the authorities of France as having enlarged their former privileges, and as having conferred on them an *exclusive right* over the coasts and waters in question. Mr. Pedley states this (page 158) "to be a conclusion which has always been successfully resisted by those entrusted with the charge of the British fisheries." The reason for its being found necessary to pass the Act referred to clearly appears in the 5th Clause of the Joint Address to Her Majesty of the Legislative Council and House of Assembly of Newfoundland, dated the 24th of April, 1872.*

The despatch No. 67 of Governor Hamilton, to his Grace the Duke of Newcastle, dated 28th September, 1853, goes into the whole question, and is a most excellent argumentative paper in defence of British rights in Newfoundland. Upon this point Governor Hamilton states:—

"Under that Treaty (Utrecht) the fishery was always concurrent. The mode in which that fishery has been carried on concurrently by the two nations is clearly evinced by the proclamations of Governors Palliser,† Shuham,‡ and Duff,§ set out in the printed papers accompanying your Grace's despatch."

Governor Darling, also, in the enclosure with his despatch to Mr. Labouchere, No. 66, July 23rd, 1856, states:—

* See Appendix, page 30. † Palliser, 19th June, 1764; 27th July, 1765.

‡ Shuham, 24th June, 1772; 27th July, 1773.

§ Duff, 7th July, 1775.

"Several proclamations of the Governors of Newfoundland, between the years 1763 and 1783, warning British subjects against *improper* interference with the French in the exercise of their rights, advert to these rights as rights '*in common*' or '*concurrent*' rights with those of British subjects;" and he also mentions the names of Governors Palliser, Shuham, and Duff.

Lord Stanley, then Colonial Secretary, in his despatch to Governor Sir John Harvey, No. 104, 29th July, 1848, acknowledges the *concurrent rights* of British subjects. The following is a portion of his lordship's despatch:—

"SIR,—I have the honour to acknowledge the receipt of your despatch of the 11th of last November, relative to the claim of the French to the exclusive right of fishing on those parts of the Island of Newfoundland, on which a right of fishing for, and curing cod, has been conceded to French subjects by treaty.

"Having referred this despatch for the consideration of the Earl of Aberdeen, I have received two letters in answer, dated 28th of February, and the 19th of this month, which convey his lordship's opinion, that Great Britain is bound to permit the subjects of France to fish during the season, in the districts specified by the Treaty and Declaration of 1783, free from any interruption on the part of British subjects; but if there be room in these districts for the fishermen of both nations to fish, without interfering with each other, this country is not bound to prevent her subjects from fishing there."

Had Lords Aberdeen and Stanley understood the French to *possess* the *exclusive right* of fishing on the coast referred to, no question as to "room" could give the British any right to fish there; but the principle is the same in fishing as in the erection of fishing establishments, neither must be done so as to interrupt the French, and if so proved on complaint to have been done, both must be removed by the British Government or authorities, but not by the French; for the Declaration states:—

"For this purpose," namely, to prevent British subjects from interrupting the fishery of the French, "His Britannic Majesty will cause the fixed settlements which shall be formed to be removed." The provision which secured the French fishermen from interruption, was not intended to limit the natural right of fishing possessed by British subjects. The object was merely to prevent them from depriving the French of the concurrent right of fishing ceded to them by treaty.

Now it must *first*, under the Declaration on which the French base the claim to an exclusive right, be proved to the satisfaction of His Britannic Majesty that such fishery of British subjects and the fixed settlements which they may form there (where the French are allowed

to fish) do interrupt the French fishery, before they can be removed, and then, His Britannic Majesty, or the British authority, not the French, is the only power entitled to remove them. But the French now usurp a territorial sovereignty on the soil of a British Colony, take the law into their own hands, and destroy British property.

This system cannot last much longer. It is the British, not the French, who have cause to complain of violation of their rights. The Assembly of Newfoundland is overwhelmed with petitions from poor fishermen who have had their sole property destroyed by the unwarrantable action of the French cruisers, to which the reports of British naval officers bear testimony. Among others, those of Captain Hoskins, of H.M.S. *Eclipse*, and of Commander Knowles, of H.M.S. *Lapwing*, may be found in the Newfoundland "Journal of Assembly" for 1878, pages 708 to 739.

Commander Knowles writes :—

"The French prohibit the English the use of cod seines, salmon, and herring nets, and bultows (all of which engines they themselves use); the English are therefore restricted to the use of the hook and line and jigger alone.

"During my second cruise in September, 1872, I found that the French naval officers were taking more active measures to prevent the inhabitants encroaching on their rights, having made several seizures of nets, and cutting moorings, &c., of English vessels, "even in places where their own people were not actually fishing."

Captain Hoskins reports (page 738) under date October 9th, 1872 :—

"In the earlier part of my report I have alluded to the good sense and good feeling usually shown by the French naval officers charged with the protection of their fisheries in dealing with our people settled on the French shore, and their readiness to meet us half way in preventing the unparalleled state of affairs created there by the treaties, from resulting in national animosities and acts of violence.

"I must regret that the commander of the *Diamant* has thought fit to depart from this wise course, and to make a raid on the nets of our fishermen throughout, as far as I can learn, the whole of the French shore, without asking for the intervention of one of our vessels, and without (in many cases certainly) any warning or notice having been given to the sufferers.

"Each such departure from the conciliatory policy hitherto pursued must accelerate the inevitable crisis, and if, as appears probable, the French having put a construction on the treaties at variance with the wording, and entirely in their own favour, are preparing to enforce their claims in their own way and without consulting us, that crisis cannot be far off."

It seems to be a most anomalous state of things that the citizens of the United States should fish on that coast without interruption from the French, and that the natives of the soil should alone be exposed to such high-handed treatment and precluded from the exercise of their natural rights.

Before closing this division of the report, it would be well to call attention in a special manner to the fact that the Treaty of Utrecht gave to the French a concurrent right only of fishing at the islands of St. Pierre and Miquelon; that subsequently those islands were conveyed in full right to the French, subject to conditions. Now if it had been intended to convey to them an *exclusive* right of fishing on the whole of the so-called French shore, suitable language would undoubtedly at that time have been used to convey such meaning.

Thirdly,—It is strong evidence in favour of the right of the British to enjoy with the French the fisheries in Newfoundland, that a continuous struggle has been made to resist the exclusive claims of the latter ever since they were put forth; and we now propose to devote a portion of the remainder of this report to a brief history of such struggles as shown by the Parliamentary debates, first premising that it is mostly due to the laxity of the British Imperial Government in not enforcing its treaty stipulations with France, that the latter has been emboldened step by step to put forth unjustifiable pretensions, until she has reached the length of assuming virtual sovereignty over British soil.

In the House of Commons June 5th, 1834, Mr. George Robinson directed attention to the question "whether France by the terms of the Treaty of Utrecht (for no others were important) had an *exclusive* right to that fishery, or only in participation with this country;" adding in the course of his speech, "For his part, he was convinced that there was not a word in the treaties which conveyed to France the exclusive right of fishing on the coast in question. Not only had they no right of exclusive possession of the fishery, but the French were prohibited from remaining permanently on the coast; and it was provided that they should go from France to the fishery, and at the end of the season return to France. On what grounds, therefore, the assumption rested he did not know."

On behalf of the Government, Mr. Poulett Thomson (afterwards Lord Sydenham) replied:—

"The House was probably aware that this subject had been under the consideration of successive Governments in this country since 1788 . . . and he recommended the hon. member (Mr. Robinson) to withdraw his motion, assuring him that attention should be paid to it."

In the same debate, Mr. Baring said :—

"He must say that the British fishermen, whether on the coast of Newfoundland or in the Channel, had not the attention paid to them which they formerly received ; and that the British Government evinced an apathy with respect to our fisheries, which was highly reprehensible."

Again, in May 1885, Mr. Robinson brought forward his "motion relative to the rights of British subjects to a concurrent fishery on that part of the coast of Newfoundland, commonly called the French shore;" and stated in his speech, "the question arose out of the construction put upon a treaty entered into between England and France in 1818, and, though so long a period as twenty-one years had elapsed, the Government had given no answer to the persons engaged in this fishery as to how the treaty was to be construed. This was very strange, and he would ask the Government how long after twenty-one years were British subjects to wait before they were told whether they had a right concurrent with the French of fishing on their own coast He protested against any further delay in adjusting this question. The French had an interest in having the settlement of the question indefinitely postponed, because whilst it was so, they arrogated to themselves the right of interrupting all others fishing on the coast. France had no other right of fishing than that given by the Treaty of Utrecht, and that was nothing more than a permissive right to fish."

The Government again on this occasion postponed giving any definite reply.

The main grounds on which the French base their claim to an exclusive right of fishing would seem to be drawn from the Declaration—usually called the British Declaration—attached to the Treaty of 1788. This Declaration is marked in *Herstlett* as having expired with the Treaty of 1788, which was annulled by the war between Great Britain and France of 1793. But even supposing the Declaration still in force, no better refutation can be given to such an assumption than the despatch of Mr. James Crowdy—the officer then administering the Government of Newfoundland—to the Right Honourable Sir John S. Packington, Colonial Secretary of State, dated 22nd September, 1852, and to be found (page 195) in the "Journal of Assembly," of Newfoundland for 1857.

In Section 4 of that despatch, Mr. Crowdy most aptly states :—

"The very terms of the Declaration in question, whilst forbidding the English fishermen 'to interrupt by their competition, or to injure the stages' &c. of the French, recognise their presence, and the whole question would appear to be settled by the concession on the part of our Government to the citizens of the United States in the Treaty of

1818, of the *same rights* which had been conceded to the French in that of 1788."

But for conclusive proof of the utter invalidity of these French claims, we come to a period in their discussion under an authority which ought to settle the question. We refer to the note of Lord Palmerston, July 10th, 1888, to Count Sebastiani, the French Ambassador, of which the following extract is copied from the "Journal of Assembly," of Newfoundland, for 1857. His Lordship says:—

"I now proceed to answer that part of your Excellency's note which relates to the conflicting opinions that are entertained as to the true interpretation of the Declaration annexed to the Treaty of September 3rd, 1788, and in which your Excellency urges the British Government to disavow the claim of the British subjects to a right of fishery upon the coasts in question" (Newfoundland) "concurrent with the rights of the subjects of France.

"And in the first place, I beg to observe that it does not appear to the British Government, that either your Excellency's representation, or that of your predecessor, has shown that any specific grievance has been sustained by French subjects, in consequence of the doubts which are said to be entertained upon this question, so as to prove that there is any pressing necessity for the call which the French Government makes in this respect upon that of Great Britain.

"But the British Government is, nevertheless, willing to enter into an amicable examination of the matter, with a view to set those doubts at rest, although it is my duty to say that the British Government are not prepared, according to the view which they at present take of the matter, to concede the point in question.

"The right of fishery on the coast of Newfoundland was assigned to French subjects by the King of Great Britain in the Treaty of Peace of 1788, to be enjoyed by them by the Treaty of Utrecht.

"But the right assigned to French subjects by the Treaty of Utrecht was 'to catch fish and to dry them on land,' within the district described in the said Treaty, subject to the condition not 'to erect any buildings' upon the island 'besides stages made of boards, and huts necessary and usual for drying of fish,' and not to "resort to the said island beyond the time necessary for fishing and drying of fish."

"A Declaration annexed to the Treaty of 1788, by which the right assigned to French subjects was renewed, contains an engagement that in order that the fishermen of the two nations may not give a cause for daily quarrels, His Britannic Majesty would take the most positive measures for preventing his subjects from interrupting, in any manner, by their competition, the fishery of the French during the temporary exercise of it, which was granted to them,' and that His Majesty would

'for this purpose cause the fixed settlements which should be found there to be removed.'

"A counter declaration stated that the King of France was satisfied with the arrangement concluded in the above terms.

"The Treaty of Peace of 1814 declares that the French right 'of fishery at Newfoundland is replaced upon the footing upon which it stood in 1792.'

"In order, therefore, to come to a right understanding of the question, it will be necessary to consider it with reference to historical facts, as well as with reference to the letter of the Declaration of 1788; and to ascertain what was the precise footing upon which the French fishery actually stood in 1792.

"Now, it is evident that specific evidence would be necessary, in order to show the construction which the French Government now desire to put upon the Declaration of 1788, is the interpretation which was given to that Declaration at the period when the Declaration was framed; and when the real intention of the parties must have been best known. It would be required for this purpose to prove that, upon the conclusion of the Treaty of 1788, French subjects actually entered upon enjoyment of an exclusive right to catch fish in the waters off the coast in question; and that they were in the acknowledged enjoyment of the exercise of that right at the commencement of the war in 1792. But no evidence to such effect has been produced. It is not indeed asserted by your Excellency, nor was it contended by Prince Talleyrand, in his note of 1831, to which your Excellency specially refers, that French subjects were, at the breaking out of the war in 1792, in the enjoyment of such an exclusive right; and, moreover, it does not appear that such right was claimed by France, or admitted by England at the termination of the war in 1801, or at the peace of 1814.

"It is true that the privilege secured to the fishermen of France by the Treaty and Declaration of 1788, a privilege which consists in the periodical use of a part of the shore of Newfoundland for the purpose of drying their fish, has in practice been treated by the British Government as an exclusive right during the fishing season, and within the limits prescribed; because from the nature of the case it would scarcely be possible for British fishermen to dry their fish upon the same part of the shore with the French fishermen, without interfering with the temporary establishments of the French for the same purpose, and without interrupting their operations. But the British Government has never understood the Declaration to have had for its object to deprive the British subjects of the right to participate with the French in taking fish at sea off that shore, provided they did so without interrupting the French cod-fishery; and although, in accordance with the true spirit of

the Treaty and declaration of 1788, prohibitory proclamations have been from time to time issued, on occasions when it has been found that British subjects, while fishing within the limits in question, have caused interruption to the French fishery, yet in none of the public documents of the British Government, neither in the Act of Parliament of 1788, passed for the express purpose of carrying the Treaty of 1788 into effect; nor in any subsequent Act of Parliament relating to the Newfoundland fishery; nor in any of the instructions issued by the Admiralty or the Colonial Office; nor in any proclamation which has come under my view, issued by the Governor of Newfoundland, or by the British Admiral upon the station; does it appear that the right of French subjects to an exclusive fishery, either of cod-fish, or of fish generally, is specifically recognised.

"In addition to the facts above stated, I will observe to your Excellency, in conclusion, that if the right conceded to the French by the Declaration of 1788 had been intended to be exclusive within the prescribed district, the terms used for defining such right would assuredly have been more ample and specific than they are found to be in that document; for in no other similar instrument which has ever come under the knowledge of the British Government is so important a concession as an exclusive privilege of this description accorded in terms so loose and indefinite.

(Signed) PALMERSTON.

"To His Excellency Count SEBASTIANI."

This dispatch of Lord Palmerston might have been considered conclusive on the question.

In May, 1857, upon a question put by Sir John Packington in the House of Commons as regards the then proposed Convention between Her Majesty and the Emperor of the French upon the subject of the Newfoundland fisheries, Mr. Labouchere, Secretary for the Colonies, stated:—

"The right hon. gentleman was aware that questions of a very complicated and embarrassing nature had arisen between the Government of England and France with regard to fishery rights of the latter in the waters of Newfoundland, and that these questions arose out of Treaties. The two Governments had for several years attempted to arrive by negotiation at a satisfactory solution of the questions, and the Government of this country had also been in constant communication with the Colonial authorities upon the point; but unfortunately those communications and negotiations had never led to any satisfactory result. At length an attempt had been made by Her Majesty's Government to arrive at a termination of the difficulty by taking another course; and having had all the facts before them, they had thought the

best chance they could have—for it was but a chance—of coming to a resolution that would be satisfactory to the two Governments, was to conclude a Convention with France, without any previous communication with the Colony, while an express stipulation should be inserted in that Convention that it should have no effect unless it should be ratified by the Colonial Legislature. Such a Convention had been framed and sent over to Newfoundland; but, he was sorry to say, that the result had been that the Colony had most unequivocally refused to adopt it, and it had therefore of course become inoperative."

The above Convention would have suited France well enough, for it would have entirely ruined the British fisheries in Newfoundland.

In this Convention we first find the term *exclusive* right to fish stipulated for, and accorded to, the French, and we find it stipulated that the French naval officers should be entitled to enforce the said French exclusive right of fishing, by expulsion of vessels or boats attempting concurrent fishing.

Article XVI. says: "The privilege of French subjects to cut wood for the repair of their fishing erections, and fishing vessels from Cape St. John to Rock Point may be exercised, as far as required, for the purpose, but not on private land, without consent of the occupier." It appears, therefore, that at the time this Convention was drawn up, the French Government did recognise our rights to occupy land on the shore in question.

In 1845 a Commission of which Mr. Thomas, a merchant of Newfoundland, was a member, representing English rights, and Captain Fabvre, on the part of the French Government, in vain attempted to settle the question.

In 1859 Captain Dunlop, R.N., and the Hon. Mr. Kent, on the part of England, and Captain Montaignac de Chauvance and M. de Gobineau, on the part of France, were sent to Newfoundland to investigate and report on fishery questions, and made separate reports to their respective Governments, having generally agreed upon all the points except some of no great importance. In reference thereto, on a question put by Mr. Arthur Mills to the Secretary of State for Foreign Affairs, in the House of Commons, 12th March, 1861, Lord John Russell replied:—

"The Commission on the Newfoundland fisheries made their report in August, 1859, and in March, 1860, a gentleman (Captain Dunlop, R.N.) was sent to Paris with a view to his coming to some arrangement with the French Government on the subject. He stayed in Paris some time, and came to an arrangement with the Government which had been all but completed, but there were two points upon which a difference prevailed. In November Her Majesty's Government made a

proposition to the French Government in regard to those two subjects, and they have not yet received an answer."

But probably, for the reasons given before by Mr. Robinson, the French interest in keeping the question indefinitely postponed, no settlement was arrived at.

We beg in conclusion to advert briefly to the second class or heading into which this question has resolved itself; a claim on the part of the French to prevent the inhabitants of Newfoundland from any occupation of land within the disputed district for mining, agricultural, or other purposes; in fact, a claim to virtual territorial sovereignty of a great portion of the coast of Newfoundland.

In the House of Lords, May 22nd, 1868, Lord Houghton, on rising to present a Petition from the House of Assembly of Newfoundland, praying that the restrictions with regard to grants of land on the so-called French coast, imposed on them by Her Majesty's Secretary of State for the Colonies in a despatch dated 7th of December, 1866, may be removed, said:—

"That, as the Petition proceeded from so important a body as the Colonial Legislature, he felt it proper to accompany its presentation with a few remarks."

The Petitioners stated that:—

"Your Petitioners desire to bring under the consideration of your most honourable House a grievance to which your Petitioners in this island are now subjected. Her Majesty the Queen has the territorial dominion over the island of Newfoundland and its dependencies, and, as a consequence, Her Majesty's Government of this Colony has the authority to issue grants within the island for mining, agricultural, and other purposes.

"This right was never questioned until the year 1866, when, by a despatch from the Right Honourable the Earl of Carnarvon, Secretary of State for the Colonies, to His Excellency Governor Musgrave, bearing date the 7th day of December, 1866, the issue of grants of land in that part of this island called the 'French shore' was prohibited.

"The French shore referred to in the said despatch includes at least one half of the territory of Newfoundland, and the restriction thus placed upon the Local Government is in effect a denial of the exercise of those rights which your Petitioners most humbly submit belong to the British Crown, and therefore to their enjoyment by Her Majesty's subjects in this island.

"Believing that the Government of this Colony has a clear right to issue grants for mining or other purposes, the Legislature, on the 9th day of April, 1867, in reply to the said despatch, passed certain resolutions and addresses declaratory of such rights, and transmitted the

same to the Secretary of State for the Colonies through His Excellency Governor Musgrave, to which neither His Excellency nor your Petitioners have received any reply.

"The restriction contained in the said despatch has had the effect of preventing the exercise of British territorial dominion, and of depriving Her Majesty's subjects of the power of taking advantage of the mineral and other resources which exist within the said French shore.

"The importance of this subject to the people of this Island is such that your Petitioners feel aggrieved that no reply has been received to the remonstrance of the Legislature, and that, so far as your Petitioners are informed, no action has been taken by the Imperial Government to assert the undoubted right of the British Crown, and to place within the reach of Her Majesty's subjects in this Island the mineral and agricultural resources which exist within the said territory.

"For some years past the Legislature of this Island, though embarrassed by financial difficulties arising from the distress prevalent amongst the labouring population, have voted large sums of money for the purpose of obtaining a mineralogical survey of the Island which will, to a great extent, be valueless if that portion of the Island be withheld from the use of Her Majesty's subjects.

"Your Petitioners therefore humbly pray that your most honourable House will be pleased to make inquiry into the matter, and to cause the restriction contained in the Right Honourable the Earl of Carnarvon's despatch to be removed, so as to place the Local Government in a position to exercise those functions necessary to ensure to your Petitioners their territorial rights."

In the course of his remarks Lord Houghton stated:—

"The colonisation of the French coast had begun long since; several populous settlements had been made on that coast, and no other attempt was ever made to move them. At the present moment a very large population, in some thirty or forty considerable stations of English subjects, on the coast were living in a condition of society such as existed nowhere else on the face of the globe. They were squatters living without jurisdiction, without law, without any punishment of crime or enforcement of rights, acknowledging as it were no overreign."

It appears strange that such a state of things should exist after the language of Mr. Labouchère, once Secretary of State for the Colonies, who, in a speech made in the House of Commons upon a motion by Viscount Bury upon this question, March 10th, 1859 said:—

"I think the people of Newfoundland should have clearly secured to them the right to cultivate and build upon their own territory."

The Hon. Mr. Little, then Attorney-General of Newfoundland, under date 14th September, 1872, writes :—

"Earl Kimberley, in his letter to the Under-Secretary of State, bearing date the 26th of June, 1872, fairly and plainly states 'that the territory (so called French shore) *without doubt belongs to Her Majesty*,' consequently I respectfully submit that Her Majesty has the *undoubted* right of directing the management and government of that territory in such manner as Her Majesty may deem most conducive to the interests of Her subjects resident there."

Referring to Lord Kimberley's Despatch,* No. 42, to Governor Hill, dated 6th of August, 1878, his Lordship states (Sec. 5) that "in May, 1872, an address from the Legislative Bodies" (of Newfoundland) 'was presented to Her Majesty, praying for the removal of restrictions affecting the territorial rights of the people of the Island."

This joint address from the Legislative Council and House of Assembly of Newfoundland is so emphatic in its respectfully earnest appeal for the acknowledgment of an undoubted right, that we recommend its careful perusal as given in full in the Appendix.

In the concluding section (No. 9) of the same Despatch, his Lordship states :—

"It appears to Her Majesty's Government that the suggestions contained in the Report of the Joint Committee of both Houses, which was transmitted in Governor Musgrave's despatch of the 29th of April, 1867, will afford a reasonable basis for the negotiations which are now to be resumed; but before proceeding further, they desire to learn the views of the Colonial Government, and I have to request you to bring this despatch under the notice of your Ministers, and to report to me at an early opportunity whether they have any objection to the course proposed."

In accordance with this request, a series of Joint Resolutions from both Houses of Newfoundland were passed on the 28rd of April, 1874, stating in preamble, "That, with the view of terminating the long-pending contentions that have arisen respecting the rights of both nations under the Treaties, it is expedient that negotiations should be resumed for that purpose on the basis of the said report (1867) as suggested in the said (Lord Kimberley's) Despatch." This report, with some amendments, is given in full in the Appendix, page 82, to which we beg to refer.

These Resolutions are now believed to form the basis of negotiations between the English and French Governments in regard to the settle-

* See Appendix, page 25.

ment of this question. It must be admitted that the suggestions of the legislature of Newfoundland are most moderate, and amply meet all the just claims of the French.

On the 4th of June, 1874, in the House of Commons, Mr. Fourke said: "He wished to appeal to the right honourable and gallant member for Stamford (Sir John Hay) to postpone a motion of which he had given notice in reference to the Newfoundland Fisheries. He did so on these grounds—the subject had been, and then was, under consideration, and negotiations were going forward both with the Colony of Newfoundland and the French Government on the subject. What he wished was that the right honourable and gallant baronet would postpone his motion until Her Majesty's Government were prepared to make a statement on the subject."

Sir John Hay replied: "He had no difficulty in acceding to the request of his honourable friend, inasmuch as his sole object was to assist in settling a very difficult question."

Such is the position of the question at the present time. The temper and patience of the people of Newfoundland have been sorely tried for over *one hundred years*. But this state of things cannot be expected to last for ever. The time has arrived when national policy imperatively demands that the question should be finally settled; so that British subjects may no longer be deprived of the right of fishing in their own waters, and colonising and developing the resources of their own territory. The interests of Newfoundland are most seriously affected by its being kept open, and those of the Empire require that its right of sovereignty within its own dominions should be maintained inviolate.

APPENDIX.

It may be added, by way of Appendix, that the value of the products of the Newfoundland Fisheries, as furnished from Custom House returns for 1874, was 8,500,960 dols., equal to £2,127,490 Newfoundland currency; that the shipping employed therein amounts to 60,405 tons, that the number of persons engaged in said fisheries was 48,200, and the capital invested £1,840,000 sterling. "Besides" (as Lord Houghton stated in his speech referred to), "its value as a fishing station, there had been discovered large copper mines, mountains of statuary marble and mineral wealth, and also, more lately, the existence of petroleum in large quantities—all of which, if these restrictions on the grants of land were continued, would be excluded from the profitable enjoyment of the Colony."

The following documents bearing further on the question are also appended:—

LORD KIMBERLEY TO GOVERNOR HILL.

Newfoundland. No. 42.

Downing Street, 6th August, 1878.

SIR,—With reference to previous correspondence, I have the honour to transmit to you a copy of a letter from the Foreign Office covering a copy of a despatch from Her Majesty's Ambassador at Paris, and of a note from the Duc de Broglie, expressing the readiness of the French Government to resume negotiations respecting the Newfoundland Fisheries, and proposing that the two Governments should be represented by Special Commissioners.

2. Her Majesty's Government cannot doubt that this announcement will be received with satisfaction by your Ministers and the Colonists generally, as representations on this subject have been repeatedly made to them by the Newfoundland Government and Legislature since the former negotiations were broken off.

8. In 1866 the Executive Council, by a minute, which was transmitted in the Governor's despatch of the 11th June, urged upon him the propriety of re-opening correspondence with Her Majesty's Government upon the question connected with the exercise of territorial rights

on the so-called "French Shore;" and in April, 1867, Her Majesty's Government were requested, by a report of the Joint Committees of the Legislative Bodies, to resume negotiations with the French Government, certain propositions being stated as the basis of such negotiations.

4. The subject was again considered in 1868, and in March, 1870. an Address to the so-called "French Shore" was presented to the Governor. The Legislative Council were informed, in reply, that the question was under the consideration of the respective Governments of Great Britain and France.

5. In August, 1870, Mr. Bennett and some of the Newfoundland Ministers who were then in England urged upon Her Majesty's Government the importance of settling these questions; and in May, 1872, an Address from the Legislative Bodies was presented to Her Majesty praying for the removal of restrictions affecting the territorial rights of the people of the Island.

6. Her Majesty's Government are fully alive to the considerations which render it important that the long-standing differences as to the French fishing rights and the settlements of the so-called "French Shore" should, if possible, be adjusted.

7. They regret that impediments should be thrown in the way of the colonisation of a large portion of valuable territory, and that the development of the mineral and other resources of the Colony, which are believed to be very considerable in the vicinity of the so-called "French Shore," should be delayed by the want of a clear understanding with the French as to free access on the part of the British settlers to the seaboard. The fact that the population of certain places near that Shore has been rapidly increasing, makes it on this account alone most desirable to arrive at a definite agreement with the French Government, with a view to prevent the recurrence of collisions and misunderstandings which, but for the forbearance and co-operation of the Naval officers of the respective Governments, might lead to serious difficulties between the two Governments.

8. With respect to this latter point, I need only refer to the complaints made in the years 1869, 1870, and 1871; and more especially to the seizure and confiscation, by a French officer in August, 1872, of nets the property of British subjects; and to a collision which threatened to take place this year owing to the announcement that the French officers were prepared to insist on enforcing the claim of the French to an exclusive right of fishing, but which has been happily averted by orders recently given to the officers of both Governments.

9. The whole subject has not been lost sight of by Her Majesty's Government, who have from time to time been in communication upon it with the French Government; but for reasons which your Ministers will understand, no favourable opportunity has recently presented itself for resuming negotiations. It appears to Her Majesty's Government that the suggestions contained in the Report of the Joint Committee of both Houses, which was transmitted in Governor Musgrave's despatch of the 29th April, 1867, will afford a reasonable basis for the negotiations which are now to be resumed; but before proceeding further, they desire to learn the views of the Colonial Government, and I have to request you to bring this despatch under the notice of your Ministers, and to report to me at an early opportunity whether they have any objection to the course proposed.

I have, &c.

(Signed) **KIMBERLEY.**

Governor HILL, C.B., &c. &c. &c.

MR. E. HAMMOND TO THE UNDER-SECRETARY OF STATE, COLONIAL OFFICE.

Foreign Office, July 14th, 1878.

SIR,—With reference to my letter of the 9th instant, and to previous correspondence, I am directed by Earl Granville to transmit to you, for the Earl of Kimberly's consideration, a copy of a despatch from Her Majesty's Ambassador at Paris, enclosing a copy of a note from the Duc de Broglie expressing the readiness of the French Government to resume negotiations respecting the Newfoundland Fisheries, and suggesting the appointment of a Special Commission with the object of settling the questions at issue.

I am, &c.

(Signed) **HAMMOND.**

THE UNDER-SECRETARY OF STATE, Colonial Office.

LORD LYONS TO EARL GRANVILLE.

Paris. June 12th, 1878.

MY LORD,—With reference to my despatch, No. 629, of the 2nd instant, and to your Lordship's, No. 817, of the 9th instant, I have the honour to enclose a copy of a note dated also the 9th instant, which I received last night from the Duc de Broglie.

It expresses the willingness of the French Government to resume negotiations respecting the Newfoundland Fisheries, and proposes that the two Governments should be represented by Special Commissioners.

I have, &c.

(Signed) LYONS.

The Earl GRANVILLE, K.G., &c. &c. &c.

THE DUKE DE BROGLIE TO LORD LYONS.

Versailles, July 9th, 1878.

AMBASSADOR,—In recent circumstances your Excellency has shown the advantages that an understanding on the question of the Newfoundland fisheries would initiate for France and England; and you added that the Government of Her Britannic Majesty was prepared to enter upon the subject in amicable discussion with us.

I hasten to acquaint you that the French Government, who desires equally to see abolished a state of affairs of which the disadvantages are not disputed, are quite disposed to renew negotiations, and to adopt measures to arrive at a conclusion so desirable in their eyes.

The Cabinet of London will judge, I hope, that the best course to follow in order to facilitate a solution is to entrust, as in preceding circumstances, to Special Commissioners the duty to represent the respective interests; and I will be thankful to your Excellency to be good enough to acquaint me if it accepts this proposition.

Accept, &c. &c.

(Signed) BROGLIE.

His Excellency Lord LYONS, &c. &c. &c.

LORD KIMBERLEY TO GOVERNOR HILL.

Newfoundland. No. 57.

Downing Street, October 6th, 1878.

SIR,—I have the honour to acknowledge your despatch, No. 79, of the 4th ultimo, transmitting certain Resolutions adopted at a meeting of your Executive Council upon the subject of the rights of Fishery claimed by the French Government under Treaty, on that part of the coast of Newfoundland commonly called the French Shore.

Her Majesty's Government regrets to find that your Ministers are not prepared to adopt, as a reasonable basis for negotiations with the French Government, the suggestions contained in the report of the Joint Committee of both Houses; but they regret still more the tone and language of these Resolutions. Her Majesty's Government are prepared to uphold the legitimate rights of British subjects under the Treaty, but your Ministers must be aware that the exact limits of those rights have been in dispute for many years, and a settlement of grave questions of this kind, which is so much to be desired in the interest of all parties, can only be obtained by mutual forbearance and concession, and not by characterising the claims of the French Government as preposterous and untenable, nor by assuming that the construction of the Treaty adopted by the Colonial Government is not open to difference of opinion.

I have, &c.

(Signed) **KIMBERLEY.**

Governor HILL, C.B., &c. &c. &c.

JOINT ADDRESS TO HER MAJESTY.

Journal of the House of Assembly of Newfoundland for 1872, Page 173.

Wednesday, 24th April, 1872.

"The Hon. the Premier, from the Joint Committee of the Legislative Council and Assembly appointed to prepare an address to Her Most Gracious Majesty, praying Her Majesty to cause to be removed the restrictions in connection with the French shore under which this Colony so inconveniently labours, presented the Report, which he handed in at the Clerk's table, where it was read as follows:—

"To the Queen's Most Excellent Majesty.

MOST GRACIOUS SOVEREIGN,—

"We, Your Majesty's loyal and dutiful servants, the Legislative Council and House of Assembly of Newfoundland, beg most humbly to approach the foot of the Throne and to state as follows:—

"1. The present relations of British and French subjects resident on that portion of the coast of this Island commonly designated the French shore, are of such a nature as to press injuriously upon the

interests of British subjects, and at the same time to endanger the peace and harmony that should subsist between the subjects of Great Britain and France in the exercise of those rights secured to them respectively by existing treaties.

" 2. By the Thirteenth Article of the Treaty of Utrecht, 'the Island called Newfoundland belongs of right to Great Britain,' but it is 'allowed to the subjects of France to catch fish and to dry them on land,' within certain limits mentioned in that Treaty, while they are forbidden 'to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying fish, or to resort to the said island beyond the time necessary for fishing and drying fish.'

" 8. By the Fourth Article of the Treaty of Versailles, 1788, 'His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland,' as it was assured to him by the Thirteenth Article of the Treaty of Utrecht, while the French fishermen shall 'enjoy the fishery which is assigned to them by the present Article as they had a right to enjoy that which was assigned to them by the Treaty of Utrecht.'

" 4. The only alterations effected by the Treaty of Versailles, as regards the fishery rights assigned to the French by the former Treaty of Utrecht, were—

" First,—An exchange of the line of coast from Cape Bonavista to Point Riche for that extending from Cape St. John to the northernmost point of the island, and thence southward to Cape Ray, which, in point of fishery privileges, was a greatly increased concession to the French.

" And, secondly,—The Islands of St. Pierre and Miquelon were ceded in *full right* to France, subject to the modifications in His Majesty's Declaration accompanying the Treaty. With these exceptions the Treaty of Utrecht forms the basis of our territorial and fishery rights.

" 5. There are certain portions of the strand which the French have during peace continuously occupied, but which in time of war were taken possession of and occupied by British settlers, who refused to surrender them on the restoration of peace; and in order to carry out the terms of the Treaties, it was found necessary to pass the Act of His Majesty 28th George III., cap. 85, to enable His Majesty to remove them, which Act was never put in force for any other purpose. The last time it was put in operation, was at the termination of the war in 1814, in compliance with the requirements of the Treaty of Paris. There were at the same time other portions of the strand in like manner permanently occupied by British subjects, and have continued to be so

to the present time. There is no desire, nor have any attempts been made, to dispossess the French of the premises occupied by them. On the contrary, British subjects have been employed to take care of them, and are still so employed during the absence of the French in winter, and it rarely happens that any such property is injured or molested.

" 6. On some occasions disputes between British and French fishermen have occurred during the exercise of their rights, and thus serious collisions have happened. In order to prevent such collisions the Governors of Newfoundland had from time to time appointed magistrates on that shore for the preservation of law and order; but from the departure of Sir J. Gaspard Le Marchant, about the year 1852, succeeding Governors have been restricted in making any such appointments.

" 7. The population of that portion of the Island has been of late years, and is still, greatly on the increase; but such now is the anomalous, inconvenient, and unsatisfactory state of things arising from the absence of any recognised jurisdiction or established system of law and order, that life and property are rendered insecure, and collisions of the gravest character occur, not only among the British settlers themselves, but also between them and the French fishermen.

" 8. It was not until the year 1866 that any restrictions were placed on the exercise of our territorial rights, and the limits from the coast inwards subsequently prescribed were, from the nature of the case, inoperative and in fact nugatory, inasmuch as the British population for the greater part were, and still are, actually resident within those limits in the prosecution of their fisheries.

" 9. The temporary right of the French to the use of the land, as may be seen by reference to the afore-mentioned Treaties, is immediately upon the sea-coast, and rarely extends beyond a few hundred yards inland. It is limited simply to the strand immediately bordering upon the sea, and this only for the purpose of 'curing and drying their fish' during the fishing season. In point of fact the French only occupy a fractional part of the large extent of coast on which they are permitted the right of fishing; whereas British subjects are resident on all parts of the coast where there is safe anchorage.

" 10. It is important to observe that this part of the coast embraces by far the best portion of the Island for agricultural, lumbering, mining, and other industrial pursuits. And were these restrictions to be continued, settlers would be deprived of the right of roadways, and of water privileges whence to ship the produce of their industry to market.

" 11. Another and most seriously prejudicial circumstance arising from the existing state of things is, that the Colony is deprived of the revenue which would otherwise be derived from the trade on that part of the coast, besides which shelter and encouragement are thus afforded for smuggling.

" 12. Were a well-organised judicial system established there, it would tend not only to the preservation of peace and good order, but also to the protection of Colonial and French Treaty rights.

" 13. On a review of the whole case it is evident, we humbly submit, that the policy, comparatively recent, pursued by the Imperial Government towards this Colony, in the restrictions so imposed, have placed the large British population resident on the so-called French shore in a position the most deplorable, and such as is unparalleled in any other civilised country in the world. Life and property are insecure, the vast resources which are known to exist on that portion of the coast are rendered unavailable, and the revenue which should flow into the Colonial Exchequer under the influence of a regularly constituted order of things is lost to the country.

" 14. We do not deem it necessary to repeat those further arguments which have so often been urged before in support of British rights upon that part of the coast. We most humbly and earnestly pray Your Majesty to cause to be removed the restrictions in reference to the appointment of magistrates, and also those affecting our territorial rights, which press so injuriously and inconveniently upon the interests of Your Majesty's subjects in this Colony, and which we would humbly observe are at variance with the rights secured to this Colony by Acts of the Legislature, which Acts were subsequently ratified by Your Majesty.

"Passed the Legislative Council, 24th April, 1872.

" (Signed) EDWARD MORRIS, *President*.

"Passed the House of Assembly, 24th April, 1872.

" (Signed) THOMAS R. BENNETT, *Speaker*."

JOINT RESOLUTIONS.

Journal of the House of Assembly of Newfoundland for 1874.—Page 164.
28rd April, 1874.

"The Chairman reported from the Committee, that they had considered the business to them referred, and had come to certain resolutions thereon, which they had directed him to report to the House and

he handed the resolutions in at the Clerk's table, where they were read, as follows :—

“ Resolved,—That this Committee having had under consideration the report of the joint Committee of the Legislative Council and this House, adopted by both branches in the Session of 1867, on the subject of French right of fishery on the coast of this Island, together with the despatch of the Right Hon. the Earl of Kimberley to his Excellency the Governor, bearing date the 6th August, 1878, are of opinion that with the view of terminating the long-pending contentions that have arisen respecting the rights of both nations under the Treaties, it is expedient that negotiations should be resumed for that purpose on the basis of the said report, as suggested in the said despatch, which report, with some amendments, is as follows :—

“ 1st. Your Committee submit that no question can arise, under the Treaties, as to the dominion of the soil on the so-called French shore, in common with the whole Island of Newfoundland, belonging to the Crown of Great Britain ; and such right in all negotiations between the two nations on the subject of the Treaties has never been impeached ; but certain privileges are claimed by the French under these Treaties and accompanying Declarations, in making erections and otherwise on the coast for fishing purposes ; and it is contended that British subjects are prohibited from having fixed settlements there.

“ 2nd. Your Committee further submit that, without French permission, it is lawful for British subjects to construct buildings and reside therein for purposes apart from those of fishery, and to make use of the strand for all purposes essential to the exercise of the territorial dominion of the interior land, and that the term ‘ fixed settlements,’ referred to in His Britannic Majesty’s Declaration, applies only to such as are in connection with the fisheries. On the coast are French establishments of a substantial character, unauthorised by the Treaties.

“ 3rd. It would appear to your Committee that the objection to issuing grants and licenses has arisen from the construction given by the French to their Treaty rights to the use of the shore in connection with the fishery : and whilst it is advisable that any uncertainty on this point should be removed by amicable arrangement, yet your Committee submit that the territory being unquestionably in Great Britain, the local executive is authorised to issue grants and licenses for agricultural, mining, and other purposes, which have not for their object the interruption of the French by competition in the fishery. Your Committee are, however, aware that in the construction of the Treaties as regards the respective rights and privileges of the subjects of both

nations, there has not been general acquiescence, and they would recommend a concurrence in any fair adjustment for the better observance and execution of existing Treaties which did not concede any further rights of fishery to the French on the coast of this Island, nor any rights or privileges whatever at Belle Isle and Labrador.

"With this view, and in the acceptance of the suggestions of Her Majesty's Imperial Government for resumption of negotiations with the Government of France, in order that the utilisation of territorial rights may no longer be obstructed—

"Your Committee recommend that the Legislature should state to Her Majesty's Government that they are not prepared to agree to any concessions to the Government of France which should convey to the French rights of fishery which they do not now possess, under existing treaties; but they would recommend the Legislature to consent that the valuable and important right to purchase bait, both herring and caplin, on the southern coast, be conceded to the French, at such times as British subjects may lawfully take the same, upon the terms herein contained being agreed upon.

"It being thus clearly understood that any further concession with regard to rights of fishery are to be excluded from the negotiations, your Committee are of opinion that it would be desirable, for the interest of all parties, if Her Majesty's Government should be able to make such an arrangement with the Government of France as would embrace the following matters, viz. :—

"1st. The establishment of a Joint Naval Commission, which shall only take cognisance of such matters as relate to the fisheries, and in case of disagreement reference be made to the respective Governments; all other questions to be dealt with by competent authorities.

"2nd. That the existing British Settlements in St. George's Bay, Cod Roy and Bay of Islands, Bonne Bay, and White Bay shall remain undisturbed; and there shall be no interruption by the French to fishing by the British in those Bays, nor interference with their buildings and enclosures there, nor with any erection or buildings on any part of the coast where the French have a temporary right of fishing, which do not actually interfere with the fishing privileges of the French, as shall be determined by the Commissioners; nor shall British subjects be molested in fishing on any part where they do not actually interrupt the French by their competition, the claim asserted by the French to the exclusive right of fishery not being warranted by the terms of her Treaties.

"3rd. That no building or enclosure which shall have been erected for five years shall be removed as interfering with the French fishing.

privileges, without compensation, to be determined only by the Commissioners; but no compensation shall be payable for any such building or enclosure hereafter erected without consent of the Commissioners.

"4th. That the Commissioners should determine the limit or boundary line to which the French may prosecute their fishery; the British having the exclusive right of salmon and all other fishing in rivers.

"5th. That the breadth of strand of which the French should have the right of temporary use for fishing purposes should be defined, thus removing objections to grants of land for all purposes beyond the boundary so to be defined, and within the same for mining purposes, right being reserved to the British Government to erect on such strand works of a military or other public character; and to British subjects for wharves and buildings necessary for mining, trading, and other purposes, apart from the fishery, in places selected with the permission of the Commissioners.

"Passed the House of Assembly, 28rd April, 1874."
